CIVIL WRIT JURISDICTION CASE NO. 11127 OF 2002

IN THE MATTER OF AN APPLICATION UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA.

Chitta Ranjan Nath…….Petitioner.

Indian Oil Corporation Ltd. & Ors……Respondents.

For the Petitioner: **Mr.Shaishav Kumar,Advocate.**
For the Corporation: **M/S. K. N. Gupta and Satyendra Krishna Prasad, Advocates.**
For the Respondent Nos. 4 & 5: Mr.Sachin Kumar, Advocate.

P R E S E N T

THE HON'BLE JUSTICE SMT. SHEEMA ALI KHAN.

Sheema Ali Khan,J.

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The petitioner has challenged the order dated 27.8.2002 by which he has been dismissed from service by the Executive Director, Indian Oil Corporation Limited, (hereinafter referred to as 'the Corporation') Barauni Unit in the district of Begusarai.

The petitioner has also prayed for quashing the order contained in annexure-10 dated 31.07.2002 passed by the Senior Human Resource Manager of the said Corporation whereby the petitioner was dismissed from service after a departmental enquiry conducted by the Deputy Manager(Hindi)-cum-Enquiry Officer, Indian Oil Corporation Limited, Barauni Unit, Begusarai.

The petitioner was appointed in the Indian Oil Corporation Limited, Barauni Refinery in the district of Begusarai as Cools-cum-Bearer on 26.12.1975. Later, he was promoted to the post of Trainee Hostel Mess Caretaker and was working on the said post on the date

on which his dismissal order was issued.

One Smt. Paro Devi and Miss. Shanta Nath claiming that they were wife and daughter of the petitioner, had produced a copy of the order dated 15.7.1998 passed in Misc. Case No. 8 of 1997 by which the Judicial Magistrate, Ist Class, Ghatshila had awarded Rs. 900/-as a maintenance to the petitioner's so-called wife Smt. Paro Devi and her daughter.

It has also been stated in the petition that the petitioner had filed a quashing application which was dismissed by the High Court. A distress warrant of arrest had been issued against the petitioner for payment of the maintenance amount.

On the basis of the aforesaid complaint of Smt. Paro Devi a departmental proceeding was initiated against the petitioner and charge sheet was submitted on 7.3.2001.

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On these facts an enquiry was held and it was alleged that the petitioner is guilty of suppression of facts and has made wrong statements on the basis of which the petitioner was appointed, and as such, it has been alleged that the petitioner is guilty of misconduct under Sub Clause (i) (b) & (xxi) of Clause 21 of the Certified Standing Orders of the said Corporation.

The petitioner filed his show cause stating therein that he never had any relationship with Smt. Paro Devi that she was not his wife and the order of maintenance obtained by Smt. Paro Devi was an ex-parte order. It is further stated that the petitioner had not instructed his counsel to withdraw his Cr. Misc. application pending before the

High Court at Jharkhand. The enquiry officer was appointed and a departmental proceeding was conducted and the petitioner was found guilty and dismissed from service.

During the pendency of the departmental proceeding, the petitioner filed a Title Suit in the civil court at Begusarai numbered as Title Suit No. 138 of 2001 stating that he is married to Smt. Geeta Rani Nath and has a daughter, namely, Tullu Rani Nath. The petitioner has stated the name of his wife is Smt. Geeta Rani Nath in the nomination form of Provident Fund, Gratuity and Pension. It is stated that as a result of the complaint filed by Smt. Paro Devi defendant no.1, the petitioner is facing a departmental enquiry and has been dismissed from service, and as such, he has made a prayer in the suit that it be declared that the defendant no.1 i.e. Smt. Paro Devi is not the legally married wife of the petitioner-plaintiff and has also prayed that the defendant nos. 3 and 4 who are the Officers of the Corporation should be restrained from the proceeding with the departmental enquiry. The written statement has been filed on behalf of the Corporation in the suit.

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Nevertheless, the departmental enquiry was concluded and the Senior Human Resource Manager by the order dated 31.7.2002 found the petitioner guilty and dismissed the petitioner from service under Sub Clause I (e) of Clause 22 of the Certified Standing Orders of the Corporation. The order of dismissal was confirmed in appeal on 27.8.2002 by the Executive Director, Barauni Refinery.

Learned counsel for the petitioner submits that Smt. Paro

Devi is stranger to him and on the basis of a false complaint before the authorities, she is responsible for having the petitioner dismissed from service. It is submitted that the petitioner challenges the claim of Smt. Paro Devi that she is the legally wedded wife of the petitioner, and as such, the dismissal of the petitioner when the matter is subjudice is illegal and unwarranted.

The respondents on the other hand, referred to the Certified Standing Orders of the Corporation and had specifically stated that under Sub Clause (i) (b) & (xxi) of Clause 21 of the Certified Standing Orders defined acts of omission and commission constituting misconduct and Sub Clause(xxi) of Clause 21 of the Certified Standing Orders states as follows:

> "Giving false information regarding particulars required to be given at the time of appointment or during service."

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It is contended that the petitioner gave a false statement that he had only one wife, namely, Smt. Geeta Rani Nath and he suppressed the fact that apart from Smt. Geeta Rani Nath he had another wife by name of Smt. Paro Devi. It is also been submitted on behalf of the respondents Corporation that the order passed by the Judicial Magistrate, Ist Class, Ghatshila is binding upon the Corporation, and as such, the petitioner is guilty of serious misconduct.

Learned counsel appearing on behalf of the petitioner on the other hand submits that the order passed by the Judicial Magistrate, Ist Class, Ghatshila granting the maintenance to Smt. Paro Devi was an

ex-parte order and the case of Smt. Paro Devi prima-facie does not appear to be true as she has claimed that she was married to the petitioner while he was working in Mosabani Mines as a Cook in the Officers Guest House as a daily wages employee. It has also been alleged that the petitioner and the respondent no.4 (Smt. Paro Devi) had three children and the respondent no.5 is the only living child. It is claimed that the respondent no.5 was born in the year 1965 and it is further alleged that the petitioner deserted her and she came to know about his whereabouts only in the year 1995 from one Kula Bahadur. The respondent no.5 also alleges that the petitioner was not only involved with her but also with her sister. It is the claim of the respondent no.4 that she had faced great hardship in the intervening period and when she learnt the whereabouts her husband, she filed a case for maintenance.

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Learned counsel for the petitioner, however, submits that prima-facie the stand of the respondent no.4 appears to be false for the reason that if in fact she was the wife of the petitioner and had learnt whereabouts of the petitioner from the said Kula Bahadur, the respondent no.4 would have visited the petitioner and tried to contact him. The fact that she has filed a case after 30 years in itself is a circumstance which would create doubt in the mind of any reasonable person.

In the circumstances, the petitioner had no remedy but to file a Title Suit to get a declaration that Smt. Paro Devi is not his legally wedded wife.

After considering the rival contentions of the parties, it is quite clear that the petitioner challenges the factum of his alleged marriage to Smt. Paro Devi and the Corporation is also aware of the fact that the relationship between the petitioner and the respondent no.4 is under challenge by way of a Title Suit, and as such, I feel that it is premature on behalf of the Corporation to hold that the petitioner was earlier married to Smt. Paro Devi and he had thus given false information regarding his marital status.

The contention of the learned counsel appearing on behalf of the Corporation that the order passed in an application under Section 125 of the Code of Criminal Procedure awarding maintenance to Smt. Paro Devi is binding upon the Corporation does not appear to be a correct position in law to me. The Corporation was not a party in the said proceeding under Section 125 of the Code of Criminal Procedure and thus it can not be said that the order is binding upon the Corporation. It can be considered for the purpose of awarding the maintenance from the salary of the petitioner, but unless there is a finding of the court to say that Smt. Paro Devi is the legally wedded wife of the petitioner, it can not be held that by this court that the order of dismissal on the ground aforesaid, is reasonable and justified. It goes without saying that the Corporation or for that matter any body else can not judge whether the petitioner was actually married to Smt. Paro Devi and this fact can only be ascertained in a suit. Admittedly, the petitioner has filed a suit for a declaration that Smt. Paro Devi is not his legally wedded wife, and as such, the Corporation ought to

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have waited for decision of the suit before passing any order with respect to the conduct of the petitioner.

On perusal of sub clause xxi of Clause 21 of the Certified Standing Orders, it would appear that the Corporation had considered the information given by the petitioner with respect to his alleged marital status to be forged. This sub clause in my view may be divided into two parts.

The first would be false information given at the time of appointment which directly effects and is connected with the qualification, duties etc., in the Corporation, whereas false information given with respect to the marital status would not directly effect the person so appointed in performance of his duties in the Corporation, and as such, in any event, penalty imposed upon the petitioner seems to be excessive. However, in this case, I am not inclined to hold that the punishment awarded to the petitioner was excessive in view of the fact that the alleged reason for misconduct is yet to be proved and substantiated by a competent court.

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Learned counsel for the Corporation relied on a decision of the Supreme Court reported in 2006(4) S. C. C. page 713 Narindra Mohan Arya-Versus- United India Insurance Company Limited and others. A suit was filed by M/S. Aman Singh against Milap Transport Company in the court at Hissar claiming compensation for the lost of the goods in question. In that suit one of the question which arose for consideration was in regard to an anti dating of a cover note. The said suit was decreed by the trial court and the first and second court

upheld the decree of the trial court. The employees of the Company submitted a memorandum to the Director of the company stating that there was a finding in his favour by the civil court, and as such, the employee prayed that he could not have been dismissed from service.

The Supreme Court held at para 32 as follows:

32. "The Appellate Authority, therefore, while disposing of the appeal is required to apply his mind with regard to the factors enumerated in sub-rule (2) of Rule 37 of the Rules. The judgment of the civil court being inter partes was relevant. The conduct of the appellant as noticed by the civil court was also relevant. The fact that the respondent has accepted the said judgment and acted upon it would be a relevant fact. The authority considering the memorial could have justifiably come to a different conclusion having regard to the findings of the civil court. But, it did not apply its mind. It could have for one reason or the other refused to take the subsequent event into consideration, but as he had a discretion in the matter, he was bound to consider the said question. He was required to show that he applied his mind to the relevant facts. He could not have without expressing his mind simply ignored the same."

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The matter was eventually remanded to the High Court by the Supreme Court to reconsider the case on other points raised by the respondent employee. The facts of this case are distinguishable from the facts of the present case on the ground that the action of the respondent employee was with respect to his official duties, and as such, the finding of the departmental proceeding could not have been

challenged by the respondent employee whereas in this case the alleged offence is with respect to the marital status of the petitioner which the petitioner has challenged in a suit. As stated earlier the Corporation or any authorities can not decide the fact with respect to relationship between the husband and the wife, father and daughter or any such relationship, and as such, in this case it is not applicable to the facts of the present case.

The petitioner then referred to a decision reported in Labour and Industrial Cases 2006(2) page 2114 with respect to the same party wherein the facts are the same and the arguments were with respect to the manner in which the departmental proceeding was conducted. The matter was again remanded back after quashing the departmental proceeding and allowing the petitioner 50% of his back wages, therefore, this case is also of not much help to the respondents Corporation.

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Learned counsel for the respondents Corporation also referred to a case of the State Bank of India and others-versus-Ramesh Dinkar Punde reported in 2006(6) Supreme Today at page 245. In this case several charges of fraud were alleged against the incubent by the State Bank of India. The Apex Court set aside the order of the High Court reinstating the respondents with all consequential benefits. Therefore, I find that the cases referred by the respondents Corporation are not applicable to the facts of this case.

For the reasons stated aforesaid, I quash the orders dated 31.7.2002 and the order dated 27.8.2002 passed by the respondent

nos.2, 1 and 3.

The petitioner is to be reinstated in his job and should be paid his back wages from the date of order of his dismissal.

The writ application is allowed.

Patna High Court
Dated 22nd
September,
2008.
A.F.R./U.K./Secretary.

(Sheema Ali Khan,J)

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